

91B. CABLE TELEVISION

91B.01. INTENT.

a. The City of Rochester, Minnesota, pursuant to Applicable Laws, is authorized to grant one or more nonexclusive Franchises to construct, operate, maintain and reconstruct Cable Television Systems within the City limits.

b. The City Council finds that the development of Cable Television Systems has the potential of having great benefit and impact upon the residents of the City. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such Persons as the City shall designate. It is the intent of this Ordinance and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any Franchises issued pursuant to this Ordinance shall be deemed to include this finding as an integral part thereof.

91B.02. DEFINITIONS.

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include

the future, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of

any other term shall have their meaning as otherwise defined in this Section. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

a. "Applicable Laws" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, or entered by any Governmental Authority.

b. "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals. Basic Cable Service as defined herein

shall be consistent with 47 U.S.C. 543(b)(7)(1993).

c. "Cable Act" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. 521-611 (1982 & Supp. V 1987)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Telecommunications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be amended.

d. "Cable Television System", "System" or "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

1. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

2. A facility that serves subscribers without using any public rights-of-way;

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. 541) to the extent such facility is used in the transmission of video programming directly to subscribers; unless the extent of such use is solely to provide interactive on-demand services;

4. An open video system that complies with Section 653 of Title VI of the Cable Act; or

5. Any facilities of any electric utility used solely for operating its electric utility system.

e. "Cable Service" means:

1. The one-way transmission to Subscribers of video programming or other programming service; and

2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

f. "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.

g. "Council" means the City Council of the City of Rochester, Minnesota.

h. "Franchise" means an initial authorization, or renewal thereof, issued by the

City, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a Cable System.

i. "Franchise Agreement" means a Franchise granted pursuant to this Ordinance containing the specific provisions of the Franchise granted, including references, specifications, requirements and other related matters.

j. "Franchise Fee" means any tax, fee or assessment of any kind imposed by the City or any other Governmental Authority on a Grantee or cable Subscriber, or both, solely because of their status as such. The term "Franchise Fee" does not include: (i) any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers); (ii) capital costs which are required by the Franchise Agreement to be incurred by the Grantee

for PEG Access Facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or (iv) any fee imposed under

Title 17 of the United States Code.

k. "Governmental Authority" means any Court or other federal, state, county, municipal or other governmental department, commission, board, agency or instrumentality.

l. "Grantee" means any Person receiving a Franchise pursuant to this Ordinance and its agents, employees, officers, designees, or any lawful successor, transferee or assignee.

m. "Grantor" or "City" means the City of Rochester, Minnesota as represented by the Council or any delegate acting within the scope of its jurisdiction. The City Administrator shall be responsible for the continuing administration of the franchise.

n. "Gross Revenues" means all revenue derived by the Grantee arising from or attributable to the sale or exchange of Cable Service by the Grantee within the City from

the operation of its Cable System including, but not limited to, monthly fees charged to Subscribers for Basic Cable Service; monthly fees charged to Subscribers for any optional

service; monthly fees charged to Subscribers for any Cable Service other than Basic Cable

Service; Installation, disconnection and reconnection fees; leased Channel fees; converter

rentals or sales; production equipment and personnel fees; local advertising revenues; revenues from home shopping Channels. Gross Revenues shall be the basis for computing the Franchise Fees imposed pursuant to Section 1.20 hereof. There shall be no deductions

from Gross Revenues except for uncollected amounts unless specifically authorized herein.

o. "Initial Service Area" means the area of the City which will receive Cable Service initially, as set forth in any Franchise Agreement.

p. "Installation" means the connection of the System to Subscribers' terminals, and the provision of Cable Service.

q. "Normal Business Hours" means those hours during which most similar businesses in the City are open to serve customers. In all cases, "Normal Business Hours"

must include some evening hours at least one night per week and/or some weekend hours.

r. "Normal Operating Conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the

Grantee include, but are not limited to, natural disasters, civil disturbances, power outages,

telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay per view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.

s. "Person" means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability

company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

t. "Public, Educational or Government Access Facilities" or "PEG Access

Facilities" means:

1. Channel capacity designated for non-commercial public, educational or governmental use; and

2. Facilities and equipment for the use of such Channel capacity.

u. "Section" means any Section, subsection or provision of this Ordinance.

v. "Service Area" or "Franchise Area" means the entire incorporated area within the City as it is now constituted or may in the future be constituted.

w. "Service Interruption" means the loss of picture or sound on one or more Cable Channels.

x. "State" means the State of Minnesota.

y. "Street" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by

others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the

Grantor shall permit to be included within the definition of Street from time to time.

z. "Subscriber" means any Person who or which lawfully elects to subscribe to, for any purpose, a Cable Service provided by the Grantee by means of or in connection with the Cable System.

91B.03. FRANCHISE TO INSTALL AND OPERATE.

a. A Franchise granted by the City under the provisions of this Ordinance shall encompass the following purposes:

1. To engage in the business of providing Cable Service to Subscribers within the Service Area.

2. To erect, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cables, lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of a Cable System in, on, over, under, upon, along and across Streets within the Service Area.

3. To maintain and operate said Franchise properties for the origination, reception, transmission, amplification and distribution of television and radio signals for the delivery of Cable Services.

4. To set forth the obligations of a Grantee under the Franchise Agreement.

b. Nothing contained in this Ordinance relieves a Person from liability arising out of failure to exercise reasonable care to avoid injuring Grantee's facilities while performing work connected with grading, regarding or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.

91B.04. FRANCHISE REQUIRED.

It shall be unlawful for any Person, other than the City, to construct, install or operate a Cable Television System in the City in, on, over, under, upon, along or across any Street without a Franchise properly granted pursuant to the provisions of this Ordinance. In no event shall the City act inconsistent with state or federal law. To the extent allowed under Applicable Laws, the City reserves the right to permit certain Persons to maintain facilities in, on, over, under, upon, along or across any streets without a franchise granted pursuant to this Ordinance when such facilities are designed solely for

internal communications and where no fees or other compensation is charged nor is providing Cable Service to other Persons. Grantee shall at all times abide by all requirements of any City right of way ordinance to the extent not inconsistent with this Ordinance and any Franchise granted hereunder.

91B.05. TERM OF THE FRANCHISE.

a. A Franchise granted hereunder shall be for the term established in the Franchise Agreement and shall not exceed fifteen (15) years.

b. A Franchise granted hereunder may be renewed upon application by the Grantee pursuant to the provisions of this Ordinance and Applicable Laws.

91B.06. FRANCHISE TERRITORY.

Any Franchise granted pursuant to this Ordinance shall be valid within the Service Area.

91B.07. FEDERAL, STATE AND CITY JURISDICTION.

a. This Ordinance shall be construed in a manner consistent with Applicable Laws.

b. This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply to the extent permitted

by Applicable Laws to all existing Franchises granted prior to the effective date of this Ordinance.

c. The rights of all Grantees are subject to the policing powers of the City to

adopt and enforce ordinances necessary to the health, safety and welfare of the public. All

Grantees shall comply with all Applicable Laws enacted by the City pursuant to that power.

d. No Grantee shall be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

e. This Ordinance and any Franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the City, State of Minnesota and applicable federal laws, including the Cable Act.

f. This Ordinance complies with the Minnesota franchise standards contained in Minnesota Statutes Section 238.084.

g. Grantee and the City shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable communications as they become effective.

91B.08. FRANCHISE TRANSFER.

a. Grantee shall not voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, the Franchise and/or

Cable System or any of the rights or privileges granted by the Franchise, without the prior

written consent of the Council, and then only upon such legally permissible terms and conditions as may be prescribed by the Council, which consent shall not be unreasonably denied or delayed. Any attempt to sell, assign, transfer, lease, sublet or otherwise dispose

of the Franchise and/or Cable System without the prior written consent of the Council shall

be null and void and shall be grounds for termination of the Franchise pursuant to Section

1.30 hereof and the applicable provisions of any Franchise Agreement.

b. Without limiting the nature of the events requiring the Council's approval under this Section, the following events shall be deemed to be a sale, assignment or other

transfer of the Franchise and/or Cable System requiring compliance with this Section: (i)

the sale, assignment or other transfer of all or a majority of Grantee's assets or the assets

comprising the Cable System to any Person so as to create a new controlling interest; (ii)

the consolidation of the Grantee or any of its parents with any other Person so as to create

a new Controlling Interest; (iii) the creation of a subsidiary corporation or other entity so as

to create a new Controlling Interest in Grantee; (iv) the sale, assignment or other transfer of

capital stock or partnership, membership or other equity interests in Grantee or any of its

parents by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in Grantee; (v) the issuance of

additional

capital stock or partnership, membership or other equity interest by Grantee or any of its

parents so as to create a new Controlling Interest in Grantee; and (vi) the entry by the Grantee into an agreement with respect to the management or operation of the Grantee,

any of Grantee's parents and/or the System or the subsequent amendment thereof so as to create a new Controlling Interest in Grantee. The term "Controlling Interest" as used

herein is not limited to majority equity ownership of the Grantee, but also includes actual

working control over the Grantee and/or the System in whatever manner exercised.

c. In the case of any sale or transfer of ownership of any Franchise and/or Cable System the City shall have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in this Ordinance and Applicable Laws and such other reasonable information as the City may request. If the City fails to render a final decision on the request within 120 days from

receipt by the City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

d. Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the property and assets comprising the Cable

System of the Grantee or upon the termination of any lease or interest covering all or a

substantial part of said property and assets. Such notification shall be considered by Grantor as notice that a change in control or ownership of the Franchise has taken place and the provisions under this Section governing the consent of Grantor to such change in control or ownership shall apply.

e. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, Grantor may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist Grantor in any such

inquiry. In seeking Grantor's consent to any change of ownership or control, Grantee shall

have the responsibility of insuring that the transferee completes an application which application shall include the information required under this Ordinance and Applicable Laws. An application, consistent with state and federal law, shall be submitted to Grantor.

The transferee shall be required to establish to the satisfaction of the City that it possesses

the legal, technical and financial qualifications to operate and maintain the System and comply with all Franchise requirements for the remainder of the term of the Franchise.

If, after considering the legal, financial and technical qualities of the transferee and determining that they are satisfactory, the Grantor finds that such transfer is acceptable, the

Grantor shall permit such transfer and assignment of the rights and obligations of such Franchise as may be in the public interest. The consent of the Grantor to such transfer shall not be unreasonably denied.

f. Any financial institution having a security interest in any and all of the property and assets of Grantee as security for any loan made to Grantee or any of its affiliates for the construction and/or operation of the Cable System must notify the Grantor

in accordance with this Ordinance and Applicable Laws that it or its designee satisfactory

to the Grantor seeks to take control of and operate the Cable Television System.

g. In addition to the aforementioned requirements in this Section 1.8, the City and Grantee shall, at all times, comply with the requirements of Minnesota Statutes Section

238.083 regarding the sale or transfer of a franchise.

91B.09. CITY'S RIGHT TO PURCHASE SYSTEM.

Pursuant to Minnesota Statutes Section 238.084(aa) the City shall have the right to purchase the Cable System.

91B.10. PURCHASE BY CITY UPON EXPIRATION OR REVOCATION.

In accordance with Section 627 of the Cable Act (47 U.S.C. 547) and all Applicable Laws, if a renewal of a franchise held by a Grantee is denied and the City acquires ownership of the Cable System or effects a transfer of ownership of the system to another

Person, any such acquisition or transfer shall be at fair market value, determined on the

basis of the Cable System valued as a going concern but with no value allocated to the franchise itself. If a franchise held by a Grantee is revoked for cause and the City acquires

ownership of the Cable System or effects a transfer of ownership of the system to another

Person, any such acquisition or transfer shall be at an equitable price.

91B.11. EMERGENCY USE.

In the case of any emergency or disaster, Grantee shall, upon request of the City or emergency management personnel, make its Cable System and related facilities available to the City for emergency use.

91B.12. GEOGRAPHICAL COVERAGE.

a. Grantee shall design, construct and maintain the Cable Television System to have the capability to pass every dwelling unit in the Service Area, subject to any Service

Area line extension requirements of the Franchise Agreement.

b. After service has been established by activating trunk and/or distribution cables for any Service Area, Grantee shall provide Cable Service to any requesting Subscriber within that Service Area within thirty (30) days from the date of request, provided that the Grantee is able to secure all rights-of-way necessary to extend service to

such Subscriber within such thirty (30) day period on reasonable terms and conditions.

91B.13. NONEXCLUSIVE FRANCHISE.

a. Any Franchise granted under this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a

Cable Television System or any component thereof, as it deems appropriate, subject to

Applicable Laws. The Grantor also specifically reserves the right to operate a municipal

Cable Television System pursuant to Applicable Laws and shall not be required to grant a Franchise to the City for the operation of a municipal Cable Television System unless specifically required by Applicable Laws.

b. In the event Grantor grants more than one Franchise Agreement to allow Persons to enter into Grantor's Streets for the purpose of constructing and operating a Cable System to provide Cable Services in the Service Area, the material provisions of each

subsequent Franchise Agreement shall be no more favorable nor less burdensome than those of previously granted Franchise Agreements so that no one Grantee is provided an unfair competitive advantage over another and to provide all parties equal protection under the law. Notwithstanding the aforementioned requirement, nothing herein shall in any way prohibit Grantor from imposing provisions in subsequent Franchise Agreements which may be less favorable or more burdensome than those provisions contained in existing Franchise Agreements so long as consistent with all Applicable Laws.

91B.14. MULTIPLE FRANCHISES.

a. Grantor may grant one or more Franchises for a Service Area. Grantor may, in its sole discretion, limit the number of Franchises granted, based upon, but not necessarily limited to, the requirements of Applicable Laws and specific local considerations; such as:

1. The capacity of the public rights-of-way to accommodate multiple coaxial cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewage.

2. The impact on the City of having multiple Franchises.

3. The disadvantages that may result from Cable System competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.

4. The financial capabilities of the applicant.

b. Each Grantee awarded a Franchise to serve the entire City shall offer service to all residences in the City in accordance with construction and service schedules established herein.

c. The City may, in its sole discretion, require developers of new residential housing with underground utilities to provide conduit to accommodate cables for a minimum of two (2) Cable Systems in accordance with the provisions of Section 1.21(d).

d. Grantor may require that any new Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.

91B.15. FRANCHISE APPLICATIONS.

Any Person other than the City, desiring an initial Franchise for a Cable Television System shall file an application with the City. A reasonable nonrefundable application fee

in an amount established by the City shall accompany the initial application. Such application fee shall not be deemed to be "franchise fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. 542), and such payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 1.20 hereof and applicable provisions of

a Franchise Agreement, or (ii) part of the Franchise Fees to be paid to the City by Grantee

pursuant to Section 1.20 hereof and applicable provisions of a Franchise Agreement.

An application for an initial Franchise for a Cable Television System shall be in a form reasonably acceptable to Grantor and shall contain, where applicable:

a. A statement as to the proposed Service Area.

b. A resume of prior history of applicant, including the legal, technical and financial expertise of applicant in the cable television field.

c. A list of the general and limited partners of the applicant, if a partnership, or the shareholders, if a corporation.

d. The percentage ownership of the applicant of each of its partners, shareholders or other equity owners;

e. A list of officers, directors and managing employees of applicant or its general partner, as applicable, together with a description of the background of each such

Person;

f. The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant;

g. A current financial statement of applicant verified by an audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the City;

h. Proposed construction and service schedule.

i. Any additional information that the City deems applicable.

91B.16. CONSIDERATION OF INITIAL APPLICATIONS.

a. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

b. A public hearing shall be set prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted subject to what conditions. The Council may grant one (1) or more initial Franchises, or may decline to grant any Franchise.

91B.17. FRANCHISE RENEWAL.

Franchise renewals shall be in accordance with Applicable Laws. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise. To the extent consistent with Applicable Laws or permitted by a court of competent jurisdiction, a reasonable non refundable renewal application fee in an amount established by the City may be required to accompany any renewal application. Such application fee shall not be deemed to be "franchise fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. 542), and such payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 1.20 hereof and applicable provisions of a Franchise Agreement, or (ii) part of the Franchise Fees to be paid to the City by Grantee pursuant to Section 1.20 hereof and applicable provisions of a Franchise Agreement.

91B.18. CONSUMER PROTECTION AND SERVICE STANDARDS.

Except as otherwise provided in the Franchise Agreement, Grantee shall maintain one or more customer service and bill payment offices at convenient locations within the Service Area to provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under Normal Operating Conditions:

a. Cable System office hours and telephone availability:

1. Grantee will maintain a local, toll free or collect call telephone access line which will be available to its Subscribers 24 hours a day, seven (7) days a week.

(i) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

(ii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

2. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90%) percent of the time under Normal Operating Conditions, measured on a quarterly basis.

3. The Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

4. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

5. Customer service center and bill payment locations will be open at least during Normal Business Hours.

6. "Normal Business Hours" means those hours during which most similar businesses in the City are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

7. "Normal Operating Conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay per view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.

b. Installations, outages and service calls. Under Normal Operating Conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to 125 feet from the existing distribution system.

2. Excluding conditions beyond the control of Grantee, Grantee will

begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem.

3. The "appointment window" alternatives for Installations, service calls, and other Installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours. (The Grantee may schedule service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

4. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

5. If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

c. Communications between Grantee and Subscribers:

1. Notifications to Subscribers:

(i) The Grantee shall provide written information on each of the following areas at the time of Installation of service, at least annually to all Subscribers, and at any time upon request:

(A) Products and services offered;

(B) Prices and options for programming services and conditions of subscription to programming and other services;

(C) Installation and service maintenance policies;

(D) Instructions on how to use the Cable Service;

(E) Channel positions of the programming carried on the System; and

(F) Billing and complaint procedures, including the address and telephone number of the Grantee's and Grantor's offices within the Service Area.

(ii) Customers will be notified of any changes in rates, programming services or Channel positions as soon as possible through announcements on the Cable System and in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by Section 1.18(c)(1)(i). However, so long as specifically allowed by the Cable Act, no prior notice shall be required by the Grantee for any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax assessment or charge imposed by a Federal agency, the State of Minnesota or Grantor.

2. Billing:

(i) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(ii) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

3. Refunds: Refund checks will be issued promptly, but no later than either:

(i) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) The return of the equipment supplied by the Grantee if service is terminated.

4. Credits: Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

91B.19. RATE REGULATION.

The City reserves the right to regulate rates for Basic Cable Service and any other services offered over the Cable System, to the extent permitted by Applicable Laws. The Grantee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time. The City shall follow the rules relating to cable

rate regulation promulgated by the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time.

91B.20. FRANCHISE FEE.

a. Following the issuance and acceptance of a Franchise, the Grantee shall pay to the Grantor a Franchise Fee in the amount set forth in the Franchise Agreement.

b. The Grantor, on an annual basis, shall be furnished a statement within sixty (60) days of the close of the calendar year, certified by a representative of the Grantee

who is an Accountant, reflecting the total amounts of Gross Revenues and all payments, and computations of the Franchise Fee for the previous calendar year. Upon ten (10) days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records. If such audit indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all reasonable costs of such an audit and shall remit to Grantor all applicable Franchise Fees due and payable together with interest thereon at the lesser of the maximum rate permitted by Applicable Laws or 18% per annum.

c. Except as otherwise provided by law, including the applicable State statute of limitations, no acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a Franchise Fee under this Ordinance or any Franchise Agreement or for the performance of any other obligation of the Grantee.

d. In the event that any Franchise Fee payment or recomputed amount is not made on or before the dates specified in the Franchise Agreement, Grantee shall pay as additional compensation an interest charge, computed from such due date, at an annual rate equal to the lesser of the maximum rate permitted by Applicable Laws or 18% per annum during the period for which payment was due.

e. Franchise Fee payments shall be made in accordance with the schedule indicated in the Franchise Agreement.

91B.21. DESIGN AND CONSTRUCTION REQUIREMENTS.

a. Grantee shall not construct any Cable System facilities until Grantee has secured the necessary permits from Grantor, or other applicable Governmental Authorities.

b. In those areas of the City where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

c. In those areas of the City where Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost.

Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground closures.

d. Any Grantee wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs and shall repair all property to the condition which existed prior to such trenching.

91B.22. TECHNICAL STANDARDS.

a. The Grantee shall construct, install, operate and maintain its System in a manner consistent with all Applicable Laws and the Federal Communications Commission technical standards, and any standards set forth in its Franchise Agreement. In addition,

the Grantee shall provide to the Grantor, upon request, a written report of the results of the Grantee's periodic proof of performance tests conducted pursuant to Federal Communications Commission standards and guidelines. The Grantee and City shall additionally comply with any other Applicable Laws or technical standards concerning any services which Grantee provides over its Cable System including the FCC's jurisdiction over enforcement of technical standards.

b. The City shall have the right to enforce the FCC's technical standards consistent with the terms of the Ordinance and any Franchise granted hereunder.

c. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other Applicable Laws.

d. All Installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and as may from time to time be amended.

e. Antennae and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other Applicable Laws.

f. All of Grantee's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures,

poles, wire, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the City may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

g. Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

91B.23. TRIMMING OF TREES.

Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Streets and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee. City representatives shall have authority to supervise at City expense and approve all trimming of trees conducted by Grantee.

91B.24. USE OF GRANTEE FACILITIES.

The City shall have the right to install and maintain, upon the poles and within the underground pipes and conduits of Grantee, any wires and fixtures desired by the City to the extent that such installation and maintenance does not interfere with existing or future operations of Grantee. If the City desires to utilize Grantee's facilities, the City and Grantee shall enter into a mutually acceptable separate agreement for the provision thereof. The Grantee may deny use of its facilities if the City's proposed installation or maintenance is not technically feasible, exceeds available space, or otherwise interferes

with the existing or future operations of Grantee.

91B.25. PROGRAMMING DECISIONS.

All programming decisions shall be at the sole discretion of Grantee; provided, however, that any change in the mix, quality or level of service shall be in accordance with 47 U.S.C. 545, and any approval required by City which shall not be unreasonably withheld.

91B.26. INDEMNIFICATION.

Grantee shall indemnify, defend and hold the City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, judgments, settlements, losses, expenses (including reasonable attorneys' fees) and costs that any of the Indemnified Parties acting within the performance of the official duties of the position and not resulting from malfeasance in office, willful neglect of duty or bad faith may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the operation of Grantee's System by Grantee and/or the acts and/or omissions of Grantee or its agents or employees, whether or not pursuant to the Franchise.

This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark, patent, or any other right of any Person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance or any Franchise Agreement, but shall exclude any claim or action arising out of the acts or omissions of the Indemnified Parties or related to any City programming or other access programming for which the Grantee is not legally responsible.

An Indemnified Party shall promptly submit a written request to Grantee of any claim or legal proceeding which gives rise to Grantee's indemnification obligations under this Section. An Indemnified Party shall be offered the opportunity to participate in the defense, compromise, settlement or other resolution or disposition of any claim or proceeding. The Indemnified Party shall fully cooperate with Grantee regarding any such matter.

91B.27. INSURANCE.

Within sixty (60) days following the grant of a Franchise, the Grantee shall obtain,

pay all premiums for and make available to the City at its request certificates of insurance

for the following insurance policies:

a. A general commercial liability insurance policy insuring, indemnifying, defending and saving harmless the Indemnified Parties from any and all claims by any Person whatsoever on account of injury to or death of a Person or Persons occasioned by the operations of the Grantee under any Franchise granted hereunder, or alleged to have been so caused or occurred with a minimum coverage of One Million Dollars (\$1,000,000) for personal injury or death of one Person, and Three Million Dollars (\$3,000,000) for personal injury or death of any two (2) or more Persons in any one occurrence. The policy limits provided for in this Section 1.27(a) may be unilaterally increased by City every five (5) years to reflect increases in the Consumer Price Index.

b. Property damage insurance for property damage occasioned by the operation of Grantee under any Franchise granted pursuant to this Ordinance, or alleged to have been so caused or occurred, with minimum coverage of One Million Dollars (\$1,000,000) for property damage to the property of any one Person and Three Million Dollars (\$3,000,000) for property damage to the property of two or more Persons in any one occurrence. The policy limits provided for in this Section 1.27(b) may be unilaterally increased by City every five (5) years to reflect increases in the Consumer Price Index.

c. Workers Compensation Insurance as provided by Applicable Laws.

d. All certificates of insurance called for herein shall be in a form satisfactory to the City with a company licensed to do business in the State of Minnesota with a rating by

A.M. Best & Co. of not less than "A," and shall require thirty (30) days written notice of any

cancellation to both the City and the Grantee. The Grantee shall, in the event of any such

cancellation notice, obtain, pay all premiums for, and file with the City, written evidence

of the issuance of replacement policies within thirty (30) days following receipt by the City

or the Grantee of any notice of cancellation.

e. If Grantee sells or transfers the Cable System, or in the event of expiration, termination or revocation of a Franchise, insurance tail coverage shall be purchased and filed with the City for the then applicable amounts, providing coverage for the time periods

according to applicable statutes of limitation, insurance for any issues attributable to the

period Grantee held its Franchise.

f. It shall be the obligation of Grantee to promptly notify the City of any pending or threatened litigation that would be likely to affect the Indemnified Parties.

91B.28. RECORDS REQUIRED AND GRANTOR'S RIGHT TO INSPECT.

a. Grantee shall at all times maintain:

1. A full and complete set of plans, records and "as-built" maps showing the location of the Cable Television System installed or in use in the City, exclusive of Subscriber service drops and equipment provided in Subscribers' homes.

2. If requested by Grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the Grantor within thirty (30) days following its request in a form reasonably acceptable to the Grantor.

b. Upon reasonable notice, and during Normal Business Hours, Grantee shall permit examination by any duly authorized representative of the Grantor, of all Franchise

property and facilities, together with any appurtenant property and facilities of Grantee

situated within or without the City, and all records relating to the Franchise, provided they

are necessary to enable the Grantor to carry out its regulatory responsibilities under Applicable Laws, this Ordinance and the Franchise Agreement. Grantee shall have the right to be present at any such examination.

c. The City shall also have the right to inspect, upon twenty-four (24) hours written notice, at any time during Normal Business Hours at Grantee's office, all books, records, maps, plans, financial statements, service complaint logs, performance test results,

records of request for service, and other like materials of Grantee as necessary for enforcement of the provisions of this Ordinance and those of any Franchise Agreement granted hereunder.

d. Copies of all petitions, applications, communications and reports submitted by Grantee or on behalf of or relating to Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other Governmental Authority having jurisdiction with respect to any matters affecting the Cable System authorized pursuant to this Ordinance and any Franchise shall be submitted upon request to the City.

Copies of responses from the Governmental Authority to Grantee shall likewise be furnished to the City within fifteen (15) days of receipt of the response.

91B.29. ANNUAL REPORTS.

a. Upon written request, Grantee shall, within ninety (90) days of each calendar year end, submit a written end of the year report to Grantor with respect to the preceding calendar year containing the following information:

1. A Summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the Cable System, including but not limited to, services commenced or discontinued during the reporting year;

2. A list of Grantee's officers, members of its board of directors, and other principals of Grantee;

3. A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in Grantee; and

4. Information as to the number of Subscribers, additional television outlets, and the number of basic and pay service Subscribers.

b. All reports required under this Ordinance, except those required by law to be kept confidential, shall be available for public inspection in the Grantee's offices during

Normal Business Hours.

c. All reports and records required under this Ordinance shall be furnished at the sole expense of Grantee, except as otherwise provided in this Ordinance or the Franchise agreement.

91B.30. FRANCHISE VIOLATION.

In the event Grantor believes that Grantee has breached or violated any material provision of this Ordinance or a Franchise granted hereunder and Grantor desires to impose the provisions of this Section 1.30, Grantor shall act in accordance with the following procedures:

Grantor shall notify Grantee of the alleged violation or breach by Certified Mail and demand that Grantee cure the same within a reasonable time, which shall not be less than ten (10) days in the case of an alleged failure of the Grantee to pay any sum or other amount due the Grantor under this Ordinance or the Grantee's Franchise and thirty (30) days in all other cases. If Grantee fails either to cure the alleged violation or breach within

the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach,

the Grantor shall then give written notice of not less than fourteen (14) days of a public hearing to be held before the Council. Said notice shall specify the violations or breaches

alleged to have occurred. At the public hearing, the Council shall hear and consider relevant evidence and thereafter render findings and its decision. In the event the Council

finds that a material violation or breach exists and that Grantee has not cured the same in a

satisfactory manner or has not diligently commenced to cure of such violation or breach after notice thereof from Grantor and is not diligently proceeding to fully cure such violation or breach, the Council may revoke and terminate the Franchise or impose any other remedy permitted by the Franchise Agreement or Applicable Laws. If the City chooses to terminate Grantee's Franchise as opposed to any other remedy authorized herein, the following additional procedure shall be followed:

1. The City shall provide Grantee with written notice of the City's intention to terminate the Franchise and specify in detail the reason or cause for the proposed termination.

2. Grantee shall be provided with fourteen (14) days advance written notice and an opportunity to be heard at a regular or special meeting of City prior to any final decision of City to terminate Grantee's Franchise.

3. In the event that City determines to terminate Grantee's Franchise, the Grantee shall have an opportunity to appeal said decision in accordance with all Applicable Laws.

4. If a valid appeal is filed, the Franchise shall remain in full force and affect while said appeal is pending, unless the term of the Franchise sooner expires.

91B.31. FORCE MAJEURE; GRANTEE'S INABILITY TO PERFORM.

In the event Grantee's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise granted hereunder is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed excused for

the period of such inability and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Section, causes or events not within the control of

Grantee shall include, without limitation, acts of God, strikes, inability to obtain necessary contract labor or materials (Grantee shall provide reasonable evidence and/or demonstrate that it has exercised all reasonable diligence in a good faith effort to secure contract labor and/or materials), sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides and fires.

91B.32. ABANDONMENT OR REMOVAL OF FRANCHISE PROPERTY.

a. In the event that the use of any property of Grantee within the Franchise Area or a portion thereof is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that property. Grantee shall be afforded thirty (30) days advance notice before this provision may be implemented.

b. Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained in, on, under or over the Franchise Area. Unless such permission is granted or unless otherwise provided in this Ordinance, the Grantee shall remove all abandoned facilities and equipment upon receipt of written notice from Grantor

and shall restore any affected Street to its former state at the time such facilities and

equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation made by

or on behalf of Grantee and shall leave all streets and other public ways and places in as

good condition as that prevailing prior to such removal without materially interfering with

any electrical or telephone cable or other utility wires, poles or attachments. Grantor shall

have the right to inspect and approve the condition of the streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided for in the Franchise Agreement shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section.

c. Upon abandonment of any Franchise property in place and the notice required under subsection (a) above, the Grantee, if required by the Grantor, shall submit

to Grantor a bill of sale and/or other an instrument, satisfactory in form and content to the

Grantor, transferring to the Grantor the ownership of the Franchise property abandoned.

d. At the expiration of the term for which the Franchise is granted, or upon its earlier revocation or termination, as provided for herein and/or in the Franchise Agreement, in any such case without renewal, extension or transfer, the Grantor shall have

the right to require Grantee to remove, at its own expense, all above-ground portions of the

Cable Television System from all Streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

e. Notwithstanding anything to the contrary set forth in this Ordinance, the Grantee may, with the consent of the Grantor, abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or

public rights-of-way in which such property is located or with the use thereof by any public

utility or other cable Grantee.

91B.33. EXTENDED OPERATION AND CONTINUITY OF SERVICES.

Upon the expiration, revocation or termination of the Franchise, Grantee may, with written permission from Grantor, continue to operate the Cable Television System for a period of time not to exceed six (6) months from the date of such expiration, revocation or

termination under the terms and conditions of this Ordinance and the Franchise and to provide the regular Subscriber service and any and all of the services that may be provided

at that time.

91B.34. RECEIVERSHIP AND FORECLOSURE.

a. A Franchise granted hereunder shall, at the option of Grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such

receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Ordinance and the Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults and violations under the Franchise and/or this Ordinance or provided a plan for the remedy of such defaults and violations which is satisfactory to the Grantor; and (2) such

receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise and this Ordinance.

b. In the case of a foreclosure or other judicial sale of the Franchise property, or any material part thereof, Grantor may give notice of termination of any Franchise granted pursuant to this Ordinance upon Grantee and the successful bidder at such sale, in which the event the Franchise granted and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after such notice has been given, unless (1) Grantor

shall have approved the transfer of the Franchise in accordance with the provisions of the Franchise and this Ordinance; and (2) such successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all terms and conditions of the Franchise. 91B.35. RIGHTS RESERVED TO GRANTOR.

a. In addition to any rights specifically reserved to the Grantor by this Ordinance, the Grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the Franchise.

b. The Grantor shall have the right to waive any provision of the Franchise, except those required by Applicable Laws, if the Grantor, in its sole opinion, determines

(1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the Grantee or the Subscribers. Waiver of any provision

in one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the Franchise unless the statement so recites.

c. The City reserves the right to delegate administrative responsibilities to any City delegate acting within the scope of its jurisdiction, provided however, enforcement actions remain the provenance of the City.

91B.36. RIGHTS OF INDIVIDUALS.

a. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, disability, national origin, age, gender or sexual preference. Grantee shall comply at all times with all other Applicable Laws, relating to nondiscrimination.

b. Grantee shall adhere to the applicable equal employment opportunity requirements of Applicable Laws, as now written or as amended from time to time.

c. Neither Grantee, nor any Person, agency, or entity shall, without the Subscriber's consent, tap or arrange for the tapping, of any cable, line, signal input device,

or Subscriber outlet or receiver for any purpose except routine maintenance of the System, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

d. In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, Grantee shall take reasonable steps to prevent

the invasion of a Subscriber's or general citizen's right of privacy or other personal rights through the use of the System as such rights are delineated or defined by Applicable Laws.

Grantee shall not, without lawful court order or other applicable valid legal authority, utilize the System's interactive two-way equipment or capability for unauthorized

personal

surveillance of any Subscriber or general citizen.

e. No cable line, wire, amplifier, converter, or other piece of equipment owned by Grantee shall be installed by Grantee in the Subscriber's premises, other than in appropriate easements, without first securing any required consent. If a Subscriber requests service, permission to install upon Subscriber's property shall be presumed. Where a property owner or his or her predecessor has granted an easement including a public utility easement or a servitude to another and the servitude by its terms contemplates a use such as Grantee's intended use, Grantee shall not be required to secure

the written permission of the owner for the Installation of cable television equipment.

f. To the extent required by Applicable Laws, no signals of a class IV cable communications channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission

of a Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time

not to exceed one year with renewal at the option of the Subscriber. No penalty may be invoked for a Subscribers failure to provide or renew the authorization. The

authorization is revocable at any time by the Subscriber without penalty of any kind. The permission must be required for each type or classification of class IV cable communications activity planned.

1. No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to the lists of the names and addresses of the Subscribers or lists that identify the viewing habits of Subscribers may be sold or otherwise made available to any Person other than to Grantee and its employees for internal business use, or to the Subscriber who is the subject of that information, unless the Grantee has received specific written authorization from the Subscriber to make the data available.

2. Written permission from the Subscriber must not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to paragraph 1 above.

3. For purposes of this Section 136, a "class IV cable communications channel" means a signaling path provided by a System to transmit signals of any type from a Subscriber terminal to another point in the System.

91B.37. CONFLICTS.

In the event of a conflict between any provision of this Ordinance and a Franchise Agreement, the provisions of the Franchise Agreement shall control.

91B.38. SEVERABILITY.

If any provision of this Ordinance is held by any Governmental Authority of competent jurisdiction, to be invalid as conflicting with any Applicable Laws now or hereafter in effect, or is held by such Governmental Authority to be modified in any way in order to conform to the requirements of any such Applicable Laws, such provision shall be

considered a separate, distinct, and independent part of this Ordinance, and such holding

shall not affect the validity and enforceability of all other provisions hereof. In the event

that such Applicable Laws are subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer

in conflict with such laws, said provision shall thereupon return to full force and effect and

shall thereafter be binding on Grantor and Grantee, provided that Grantor shall give Grantee thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to

comply with such provision.

3266; 3/8/99

